being to refute the inference from defendant's testimony that he had lawful possession of the money.

Such cross-examination would also have been proper to show that the prosecuting witness had obtained the money from someone in the governmental service to lay the foundation for the possible defense of entrapment. See *Martin v. United States*, 278 Fed. 913 (C.C.A. 2d 1922); *O'Brien v. United States*, 51 F. (2d) 674 (C.C.A. 9th 1931).

In the case under consideration, however, the defense did not state any such purposes for the cross-examination, and the questions were not raised.

Life Insurance—Beneficiary as Murderer and Sole Next of Kin—[West Virginia].—The beneficiary of a life insurance policy and sole next of kin of the insured murdered the insured. The administrator of the insured's estate, which was debt free, sued for the proceeds of the policy but was denied recovery. *Wickline v. Phoenix Mut. Life Ins. Co.*, 106 W.Va. 424, 145 S.E. 743 (1928). The state then sued the insurance company claiming the proceeds as bona vacantia. *Held*, there being no equity in favor of the state, the insurance company need not pay. *State v. Phoenix Mut. Life Ins. Co.*, 170 S.E. 909 (W.Va. 1933).

A beneficiary of a life insurance policy who murders the insured loses his rights under the policy and the insurance money goes to the estate of the insured. *Inter-Southern Life Ins. Co. v. Butts*, 179 Ark. 349, 16 S.W. (2d) 184 (1929); *Schmidt v. Northern Life Assn.* 112 Ia. 41, 83 N.W. 800 (1900); *Anderson v. Life Ins. Co. of Va.*, 152 N.C. 1, 67 S.E. 53 (1910); but see *Spicer v. N.Y. Life Ins. Co.*, 268 Fed. 500 (1920). Where the wrongdoing beneficiary is also a next of kin of the insured some courts permit the insured's administrator to recover, apparently even though this may permit the murderer to take as next of kin. *National Benefit Life Ins. Co. v. Davis*, 38 Oh. App. 454, 176 N.E. 490 (1929); *Equitable Life Assurance Society v. Weightman*, 61 Okla. 106, 160 Pac. 629 (1916); *Murchison v. Murchison*, 203 S.W. 423 (Tex. Civ. App. 1918). Other courts recognize the administrator's right to recover, but treat the murderer as non-existent for purposes of distribution of the estate, thus preventing the murderer recovering as next of kin after having denied him as beneficiary. *Illinois Bankers' Life Assn. v. Collins*, 341 Ill. 548, 173 N.E. 465 (1930); *Slocum v. Metropolitan Life Ins. Co.*, 245 Mass. 565, 139 N.E. 816 (1923); *De Zotell v. Mutual Life Ins. Co. of N.Y.*, 60 S.D. 532, 245 N.W. 58 (1932). But, since under the view of certain courts the statutes of descent and distribution allow no exception, the policy which prevented the murderer from recovering as beneficiary will also prevent the administrator from recovering. *McDonald v. Mutual Life Ins. Co.*, 178 Ia. 863, 160 N.W. 289 (1916); *Johnston v. Metropolitan Life Ins. Co.*, 85 W.Va. 70, 100 S.E. 865 (1919). This was the position taken by the West Virginia court when the administrator sued on the policy involved in the present case. *Wickline v. Phoenix Mut. Life Ins. Co.*, 106 W.Va. 424, 145 S.E. 743 (1928). The court in that case might well have permitted the administrator to recover and then have held the sole distributee-murderer as a constructive trustee for the ones properly entitled to take, all the other heirs of the insured except himself, the state taking as bona vacantia in the absence of other heirs. This solution has been suggested for an analogous problem, the murder of an ancestor or testator by an heir or legatee. See *Barnett v. Couey*, 224 Mo. App. 913, 27 S.W. (2d) 757 (1930); *Ellerson v. Westcott*, 148 N.Y. 149, 42 N.E. 540 (1896); *Van Alstyne v. Tuffy*, 169 N.Y.S. 173, 103 Misc. 445 (1918); *Bryant v. Bryant*, 193 N.C. 372, 137 S.E. 188 (1927); Ames,

Lectures on Legal History (1913), 310, 311; 3 Pomeroy, Equity Jurisprudence (4th ed. 1918), 1054. But, since the West Virginia court refused to permit the administrator to recover, it might well have permitted the state to recover by regarding it as the cestui of a constructive trust with the murderer-beneficiary as constructive trustee. The contract between the insurance company and the insured was a chose in action, a property right, which the insured intended to vest in his wife. Since the wrongdoer certainly will not be permitted to receive it, and since the insurance company should not be able to escape liability on the contract, the state should be able to claim this chose in action as property without an owner. See 20 Col. L. Rev. 465 (1920).

Mortgages—Right to Possession of Senior Mortgagee as against Receivers Appointed for Junior Mortgagee—[Illinois].—A senior mortgagee filed a petition praying that a receiver appointed in a prior foreclosure proceeding brought by a junior mortgagee be ordered to surrender possession of the mortgaged realty and to turn over the rents and profits to him. *Held*, affirming the appellate court's decision, 270 Ill. App. 473, that the petition be granted since the senior mortgagee was the legal title holder and therefore entitled to possession of the mortgaged premises. *Wolkenstein v. Slonim*, 355 Ill. 306, 189 N.E. 312 (1934).

If the prior mortgagee is not in possession the application of the subsequent mortgagee for a receiver will generally be allowed assuming the usual requirements are present. *Bryan v. Cormick*, 1 Cox 422 (1788); *Dalmer v. Dashwood*, 2 Cox 378 (1793); *Silver v. Bishop of Norwich*, 3 Swans. 112 (1818); *Berney v. Sewell*, 1 Jac. & W. 647 (1820). But the appointment must be made without prejudice to those who have prior rights in the property. *Post v. Dorr*, 4 Ed. Ch. (N.Y.) 412 (1844); *Washington Life Ins. Co. v. Jacob Fleischauer et al.*, 10 Hun (N.Y.) 117 (1877); *Courtleyeu v. Hathaway*, 11 N.J.Eq. 39, 42 (1855); *Tanfield v. Irvine*, 2 Russ. 149 (1826). See also, 3 Jones, Mortgages (8th ed. 1928), 420–3, §§ 1937–39.

In Illinois it seems settled that on default the senior mortgagee has a legal right to possession. *Taylor v. Adams*, 115 Ill. 570 (1886); *Rohrer v. Deatherage*, 336 Ill. 450, 454, 455, 168 N.E. 650 (1929). If the junior mortgagee has already secured the appointment of a receiver, the senior mortgagee may ask leave of the court of equity in which the receiver for the junior mortgagee was appointed to bring ejectment. *Angel v. Smith*, 9 Ves. 335 (1804); *Brooks v. Greathed*, 1 Jac. & W. 176 (1820); *Green v. Winter*, 1 Johns. Ch. (N.Y.) 60 (1814). But if there is an express recognition of the senior mortgagee's title in the order granting the receiver some courts intimate that such leave need not be obtained. See *Wiswall v. Sampson*, 14 How. (U.S.) 52 (1852); *Walmsley v. Mundy*, 13 Q.B.D. 807 (1884). But see *Underhay v. Read*, 20 Q.B.D 209 (1887). But a suit in ejectment frequently involves delay and in the meantime the junior mortgagee is entitled to the rents and profits collected by the receiver (*Sosnick v. Jesieski*, 110 N.J.Eq. 267, 159 Atl. 630 (1932); *Sullivan v. Rosson*, 223 N.Y. 217, 119 N.E. 405 (1918); but see *Bergin v. Robbins*, 109 Conn. 329, 335 (1929)) unless the senior mortgagee was made a party to the proceedings by the junior mortgagee for the appointment of the receiver, in which case the proceeds are distributed according to the priority of the claims. *Cross v. Will County Nat. Bank*, 177 Ill. 33, 52 N.E. 322